

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Grivna Volunteer Committee and Lori
Grivna,
Complainants,
vs.

NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR
PROBABLE CAUSE HEARING

House DFL Caucus,

Respondent.

TO: Lori Grivna and the Grivna Volunteer Committee, 5960 Ridge Creek Road, Shoreview, MN 55126; and Alan Weinblatt, Weinblatt & Gaylord, PLC, 111 East Kellogg Blvd., Suite 300, St. Paul, MN 55101.

On November 3, 2006, the Grivna Volunteer Committee and Lori Grivna filed a Complaint with the Office of Administrative Hearings alleging that the Minnesota House DFL Caucus violated Minnesota Statutes § 211B.06. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of Minn. Stat. § 211B.06.

THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **10:00 a.m. on Thursday, November 9, 2006**. The hearing will be held by call-in telephone conference. You must call: **1-888-677-3757** at that time. Follow the directions and enter the numeric pass code **"17625"** when asked for the meeting number. The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the probable cause hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be faxed to Judge Luis at 612-349-2665.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary

hearings are conducted pursuant to Minn. Stat. § 211B.35. If the Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: November 6, 2006

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

MEMORANDUM

Complainant Lori Grivna is running as a candidate for Minnesota House District 50B in the November 7, 2006, General Election. The Complaint alleges that on or about November 2, 2006, the Respondent DFL Caucus mailed a campaign flyer that it had prepared that contained the following false statement:

Lori Grivna, “...favors what amounts to a voucher system.”¹

The flyer attributed the above quote to the October 26, 2006, edition of the *St. Paul Pioneer Press* newspaper. Complainant Grivna maintains that she has never supported a voucher system for public schools and that her seven year record on the Mounds View School Board confirms that fact.

In its October 26, 2006, editorial endorsing her candidacy, *The St. Paul Pioneer Press* did state that Ms. Grivna “favors what amounts to a voucher system.”² However, the paper printed the following statement under the heading “correction” in its November 1, 2006, edition:

Lori Grivna, a Republican candidate to represent District 50B in the Minnesota House of Representatives, supports expanding tax credits for

¹ Complaint Ex. 1. (Emphasis original).

² Complaint Ex. 2.

all families with children in school to help cover the extra costs of various fees and other expenses. She doesn't favor public-money vouchers to fund private education. This newspaper's endorsement of Grivna on this page Oct. 26 gave an inaccurate picture of her position regarding vouchers.³

The campaign flyer also contained the following statement, which the Complainants maintain is false:

Lori Grivna closes local schools after the School District chose to renovate them ... wasting our tax dollars.⁴

The flyer cited ISD School Board Minutes of December 4th as the source for this statement.⁵ The Complainants maintain that the K-5 instructional programs were removed from two buildings in the Mounds View school district and consolidated into several elementary sites due to declining enrollment. According to the Complainants, the "closed" buildings are not closed at all but are filled to capacity with district programs such as Early Childhood Family Education, Community education, Adult Basic Education, special education and other student instruction. The Complainants argue that the consolidation alone resulted in an ongoing savings of \$600,000 in administrative expenses, and the District Service Center building and land will be sold in the near future. The Complainants contend that the assertion by Respondent that these actions "wasted tax dollars" is false.

Minn. Stat. § 211B.06, subd. 1, prohibits intentional participation:

... [i]n the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

On November 3, 2006, the Administrative Law Judge received by FAX a response to the Complaint from Respondent's counsel. However, at the *prima facie* stage of the process, the Administrative Law Judge considers only the Complaint and its attachments. Here, the Administrative Law Judge finds that the Complainants have made a *prima facie* showing that Respondent violated the prohibition against false campaign material found at Minn. Stat. § 211B.06. This matter will proceed to a probable cause hearing at which time the Administrative Law Judge will consider the factual issues and argument raised by the Respondent in its November 3, 2006, letter.

R.C.L.

³ Complaint Ex. 3.

⁴ Complaint Ex. 1.

⁵ Complaint Ex. 1, fn 2.